

REFERENCE TITLE: public safety guardianships

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

HB 2356

Introduced by
Representative Barto

AN ACT

AMENDING SECTION 13-4517, ARIZONA REVISED STATUTES; AMENDING TITLE 14, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 5.1; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3027.02; RELATING TO GUARDIANSHIPS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-4517, Arizona Revised Statutes, is amended to
3 read:
4 13-4517. Incompetent defendants; disposition
5 A. If the court finds that a defendant is incompetent to stand
6 trial and that there is no substantial probability that the defendant will
7 regain competency within twenty-one months after the date of the original
8 finding of incompetency, any party may request that the court:
9 1. Remand the defendant to an evaluating agency for the institution
10 of civil commitment proceedings pursuant to title 36, chapter 5. If the
11 defendant is remanded, the prosecutor shall file a petition for evaluation
12 and provide any known criminal history for the defendant.
13 2. ~~Appoint a guardian~~ INITIATE PROCEEDINGS pursuant to title 14,
14 chapter 5 OR CHAPTER 5.1.
15 3. Release the defendant from custody and dismiss the charges
16 against the defendant without prejudice.
17 B. If the court enters an order pursuant to subsection A, paragraph
18 1 or 2 of this section, the court may also order an assessment of the
19 defendant's eligibility for private insurance or public benefits that may
20 be applied to the expenses of the defendant's medically necessary
21 maintenance and treatment, including services pursuant to title 36,
22 chapter 29, state-only behavioral health services, title xviii services
23 and medicare part D prescription drug benefits, supplemental security
24 income and supplemental security disability income.
25 C. The court may retain jurisdiction over the defendant until the
26 defendant is committed for treatment pursuant to title 36, chapter 5 or a
27 guardian is appointed pursuant to title 14, chapter 5 OR CHAPTER 5.1.
28 D. If the court remands the defendant for the institution of civil
29 commitment proceedings pursuant to title 36, chapter 5 and the court is
30 notified that the defendant has not had a civil commitment evaluation, the
31 court, if it has retained jurisdiction, may order the sheriff to take the
32 defendant into custody so that the court may explore options pursuant to
33 subsection A, paragraph 2 or 3 of this section.
34 E. If the court is notified that the defendant has not been ordered
35 into treatment pursuant to title 36, chapter 5 and the court has retained
36 jurisdiction, the court may order the sheriff to take the defendant into
37 custody so that the court may explore options pursuant to subsection A,
38 paragraph 2 or 3 of this section.
39 F. IF THE COURT ORDERS THE INITIATION OF PROCEEDINGS PURSUANT TO
40 TITLE 14, CHAPTER 5 OR CHAPTER 5.1, THE COURT MAY ORDER THE SHERIFF TO
41 RETAIN CUSTODY OF THE DEFENDANT DURING THAT PROCESS AND MAY EXTEND THIS
42 ORDER DURING THE TIME REQUIRED TO EXPLORE OPTIONS PURSUANT TO SUBSECTION
43 A, PARAGRAPH 1 OR 3 OF THIS SECTION IF NO GUARDIANSHIP OR PUBLIC SAFETY
44 GUARDIANSHIP IS ORDERED.

1 A SUMMARY OF THE ALLEGED INCAPACITATED INCOMPETENT PERSON'S CURRENT
2 CRIMINAL CASE AND RELEVANT PAST CRIMINAL HISTORY.

3 D. AFTER THE FILING OF A PETITION, A PSYCHIATRIST APPOINTED BY THE
4 COURT SHALL EXAMINE THE ALLEGED INCAPACITATED INCOMPETENT PERSON. THE
5 PSYCHIATRIST SHALL FILE A REPORT WITH THE COURT INCLUDING THE INFORMATION
6 REQUIRED IN SECTION 14-5303, SUBSECTION D AND AN ASSESSMENT OF WHETHER THE
7 ALLEGED INCAPACITATED INCOMPETENT PERSON IS LIKELY TO COMMIT VIOLENT ACTS
8 OR CAUSE SERIOUS PHYSICAL HARM TO ANOTHER PERSON IN THE FUTURE. THE
9 OFFICE SHALL PAY THE COSTS OF THE PSYCHIATRIST'S REPORT AND EXAMINATION
10 AND ANY COSTS OF A COURT-APPOINTED INVESTIGATOR.

11 E. IN DETERMINING WHETHER TO APPOINT A PUBLIC SAFETY GUARDIAN, THE
12 COURT SHALL CONSIDER THE ALLEGED INCAPACITATED INCOMPETENT PERSON'S
13 WELFARE AND POTENTIAL TO COMMIT VIOLENT ACTS OR CAUSE SERIOUS PHYSICAL
14 HARM TO ANOTHER PERSON IN THE FUTURE IF A PUBLIC SAFETY GUARDIANSHIP IS
15 NOT ORDERED.

16 F. THE COURT MAY APPOINT THE OFFICE AS A PUBLIC SAFETY GUARDIAN IF
17 THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT ALL OF THE FOLLOWING
18 ARE TRUE:

19 1. THE PERSON FOR WHOM A PUBLIC SAFETY GUARDIANSHIP IS SOUGHT IS
20 INCAPACITATED.

21 2. THE APPOINTMENT IS NECESSARY TO PROVIDE FOR THE DEMONSTRATED
22 NEEDS OF THE INCAPACITATED PERSON.

23 3. THE PERSON'S NEEDS CANNOT BE MET BY LESS RESTRICTIVE MEANS,
24 INCLUDING THE USE OF APPROPRIATE TECHNOLOGICAL ASSISTANCE.

25 4. THE PERSON IS LIKELY TO COMMIT VIOLENT ACTS OR CAUSE SERIOUS
26 PHYSICAL HARM TO ANOTHER PERSON IN THE FUTURE IF A PUBLIC SAFETY
27 GUARDIANSHIP IS NOT ORDERED.

28 5. THE PERSON WILL LIKELY BE IN NEED OF INPATIENT MENTAL HEALTH
29 CARE AND TREATMENT WITHIN THE PERIOD OF THE PUBLIC SAFETY GUARDIANSHIP.

30 G. THE ALLEGED INCAPACITATED INCOMPETENT PERSON IS ENTITLED TO
31 ASSISTANCE OF COUNSEL AT ANY PROCEEDING THAT IS CONDUCTED PURSUANT TO
32 CHAPTER 5 OF THIS TITLE OR THIS CHAPTER AFTER THE OFFICE IS APPOINTED
33 PUBLIC SAFETY GUARDIAN. IF THE ALLEGED INCAPACITATED INCOMPETENT PERSON
34 IS INDIGENT, THE COURT SHALL APPOINT COUNSEL TO ASSIST THE ALLEGED
35 INCAPACITATED INCOMPETENT PERSON. THE COUNTY BOARD OF SUPERVISORS FOR THE
36 COUNTY IN WHICH THE PETITION IS FILED MAY FIX A REASONABLE AMOUNT TO BE
37 PAID BY THE COUNTY FOR THE SERVICES OF AN APPOINTED ATTORNEY.

38 14-5804. Public safety guardian; placement; state hospital
39 program; costs; definition

40 A. A PUBLIC SAFETY GUARDIAN HAS ALL THE POWERS OF A GUARDIAN
41 PURSUANT TO SECTION 14-5312 AND AS OTHERWISE PROVIDED BY LAW. A PUBLIC
42 SAFETY GUARDIAN MAY PLACE THE INCAPACITATED INCOMPETENT PERSON IN
43 INPATIENT PSYCHIATRIC FACILITIES LICENSED BY THE DEPARTMENT OF HEALTH
44 SERVICES AS PROVIDED IN SECTION 14-5312.01 FOR THE DURATION OF THE PUBLIC
45 SAFETY GUARDIANSHIP.

1 B. THE STATE HOSPITAL SHALL ESTABLISH A PROGRAM TO TREAT, HOUSE AND
2 CARE FOR INCAPACITATED INCOMPETENT PERSONS FOR WHOM A PUBLIC SAFETY
3 GUARDIAN HAS BEEN APPOINTED. THE PROGRAM SHALL INCLUDE INPATIENT SERVICES,
4 OUTPATIENT SERVICES AND HOUSING FOR THOSE RECEIVING OUTPATIENT SERVICES.
5 THE STATE HOSPITAL SHALL PLACE A PERSON WHO IS ADMITTED TO THE PROGRAM AT
6 AN APPROPRIATE LEVEL OF CARE AND HOUSING TO PROVIDE THE PERSON WITH
7 APPROPRIATE SERVICES AND TO PROTECT THE PUBLIC FROM ACTS COMMITTED BY AN
8 INCAPACITATED INCOMPETENT PERSON.

9 C. ON THE REQUEST OF THE OFFICE AND AFTER COMPLIANCE WITH SECTION
10 14-5312.02, THE STATE HOSPITAL SHALL ADMIT AN INCAPACITATED INCOMPETENT
11 PERSON TO THE PROGRAM. THE OFFICE MAY WITHDRAW AN INCAPACITATED
12 INCOMPETENT PERSON FROM THE PROGRAM IF THE OFFICE DETERMINES THAT THE
13 PLACEMENT IS NO LONGER APPROPRIATE.

14 D. IF THE INCAPACITATED INCOMPETENT PERSON HAS PRIVATE INSURANCE OR
15 PUBLIC BENEFITS THAT MAY BE APPLIED TO THE EXPENSES OF ADMISSION TO THE
16 PROGRAM, THE STATE HOSPITAL SHALL APPLY THESE BENEFITS TO THE COSTS OF THE
17 INCAPACITATED INCOMPETENT PERSON'S ADMISSION TO THE PROGRAM. IF THE
18 INCAPACITATED INCOMPETENT PERSON DOES NOT HAVE THESE BENEFITS, THE STATE
19 HOSPITAL SHALL BEAR THE COSTS OF THE INCAPACITATED INCOMPETENT PERSON'S
20 ADMISSION TO THE PROGRAM. DURING THE INCAPACITATED INCOMPETENT PERSON'S
21 INPATIENT STAY IN THE PROGRAM, THE OFFICE AND THE STATE HOSPITAL SHALL
22 TAKE ALL REASONABLE STEPS TO FACILITATE THE INCAPACITATED INCOMPETENT
23 PERSON'S ELIGIBILITY FOR AND COVERAGE BY ALL AVAILABLE PRIVATE INSURANCE
24 OR PUBLIC BENEFITS THAT MAY BE APPLIED TO THE EXPENSES OF ADMISSION TO THE
25 PROGRAM.

26 E. FOR THE PURPOSES OF THIS SECTION, "PROGRAM" MEANS THE PROGRAM
27 PRESCRIBED IN SUBSECTION B OF THIS SECTION.

28 Sec. 3. Title 41, chapter 27, article 2, Arizona Revised Statutes,
29 is amended by adding section 41-3027.02, to read:

30 41-3027.02. Office of public safety guardianships;
31 termination July 1, 2027

32 A. THE OFFICE OF PUBLIC SAFETY GUARDIANSHIPS TERMINATES ON JULY 1,
33 2027.

34 B. TITLE 14, CHAPTER 5.1 AND THIS SECTION ARE REPEALED ON JANUARY
35 1, 2028.

36 Sec. 4. Purpose

37 Pursuant to section 41-2955, subsection E, Arizona Revised Statutes,
38 the legislature establishes the office of public safety guardianships to
39 promote the protection and treatment of incapacitated incompetent persons
40 and to protect the public from potential acts committed by these persons.